

5541(a) Prop of Estate Teachers Retirement
§ 541(c)(1) Spending Trust
OCGA § 44-13-100 Exemption

IN THE UNITED STATES BANKRUPTCY COURT

FILED

FOR THE

at 9 O'clock & 55 min A M

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

Date 10/6/87
MARY C. BECKON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

In the matter of:

EVERETT M. HUGGINS

Debtor

Chapter 7 Case

Number 187-00556

ORDER ON TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION

James D. Walker, Jr., the Trustee in the above Chapter 7 case filed an objection to the Debtor's claim of exempt property. The Trustee specifically objected to that portion of Debtor's claim that seeks to exclude from the bankruptcy estate a balance of \$7,200.00 in Debtor's Teachers Retirement System Account ("TRS"). The Trustee asserted that those monies could be exempted only to the extent of \$5,400.00 under 11 U.S.C. Section 522 and O.C.G.A. 44-13-100(6). Debtor contends that the balance in the TRS account is not property of the bankruptcy estate as defined in 11 U.S.C. Section 541 and, alternatively, that the account balance is exempt under O.C.G.A. 44-13-100(2)(E) as a "payment under a pension, annuity, or similar plan".

FINDINGS OF FACT

1) Debtor is an educator, employed by a local board of education, and subject to the provision of the Teachers Retirement System of Georgia, O.C.G.A. 47-3-1, et. seq.

2) Debtor is assessed a percent of his compensation payable to TRS each payroll period, pursuant to O.C.G.A. 47-3-41. This deduction is not voluntary on his part. O.C.G.A. 47-3-60(a).

3) Debtor may not withdraw the funds deposited in his TRS account except under cessation of employment. O.C.G.A. 47-3-128.

4) The TRS account balance is exempted under Georgia law from "levy and sale, garnishment, attachment, or any other process whatsoever, and shall not be assignable . . . ". O.C.G.A. 47-3-28.

5) The balance in Debtor's account now exceeds \$8,400.00 and is growing each pay period. No evidence was introduced as to the balance in this account on the date Debtor filed for relief under Chapter 7.

CONCLUSIONS OF LAW

The balance in this account certainly is encompassed by the broad definition of property of the estate set forth in 11 U.S.C. Section 541(a)(1) ---" . . . all legal or equitable interests of the debtor in property". Debtor holds a vested right in the fund itself; should he resign from his teaching job he can withdraw his contributions. While the fund is not subject to assignment, levy or exemption under Georgia law, that restriction is swept away and such "non-leviable" property still retains its character as property of the estate unless it qualifies as an express spendthrift trust under state law. 11 U.S.C. Section 541(c)(1) and (2); See In re Lichstrahl, 750 F.2d 1488 (11th Cir., 1985). In this regard "property of the estate" has a broader reach under the 1978 Code than under the Bankruptcy Act of 1898. See In re Goff, 706 F.2d 574 (5th Cir., 1983); In re Werner, 31 B.R. 418, 420 (B.C. Minn., 1983). Thus, I conclude that this account is property of the estate.

In Georgia, the law of trusts provides that a spendthrift trust may be settled upon " . . . a person of full age whenever in fact the person, on account of mental weakness, intemperate habits, or wasteful and profligate habits, is unfit to be entrusted with the right and management of property . . . ", O.C.G.A. Section 53-12-25. In this case, the

Debtor's TRS account is a statutory requirement for school teachers. There is no indication that the General Assembly enacted the TRS because teachers in general, and the Debtor in particular, are in any way incapable of managing their own affairs. Accordingly, I conclude that the Debtor's TRS account is not a spendthrift trust under Georgia law and that the corpus of the TRS account is property of the estate. See Matter of Craddock, 62 B.R. 583 (B.C.N.D. Ga., 1983) (Holding that corpus of ERISA-qualified pension plan was property of estate where pension plan was not a spendthrift trust under Georgia law); In re Werner, 31 B.R. 418 (B.C.D. Minn., 1983) (Holding that teach retirement system pension plan was not a spendthrift trust under Minnesota law).

Debtor had not otherwise claimed his full exemption under O.C.G.A. 44-13-100 and is entitled to exempt \$5,400.00 of the account pursuant to subsections (1) and (6). Debtor cannot, however, exempt any portion of this account under subsection (2)(E) which provides an exemption for:

"A payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;"

There is nothing in the statutory language to suggest that the corpus of an account can be exempted under this section. Rather this section protects only the monthly flow of income derived from an annuity, much as it protects social security, veterans and unemployment benefits. Craddock, supra. Debtor is not now retired and is receiving no such monthly benefit. Had Congress or the Georgia General Assembly intended to protect the corpus of a TRS account, it was within their power to do so. Since neither body did so, I will not engraft such an interpretation on what is otherwise, unambiguously, a much narrower exemption.

O R D E R

For the foregoing reasons, IT IS THE ORDER OF THIS COURT that the Trustee's objection is sustained to that portion of the TRS account balance which, on the date of filing this case, exceeded the sum of \$5,400.00.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of October, 1987.